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EASTERN

F.O.
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1948

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PALESTINE

FILE No. 92

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1948

PALESTINE

E

92

2

JAN

Registry
Number

FROM

No.

Dated

Received
in Registry

E92/92/31

Mr. Theobald

Matthew

Director of Public

Prosecutions

11/1/48 25/1/48

2 Jan

Participation of British Subjects in Palestine Conflicts.

Refer 4.11. letter E11974/9373/31 re participation
of British Subjects in Arab-Jewish conflict
breaking out in Palestine.

Now transmits record on same.

Last Paper.

(11974/9373/31) 47

References.

68628

(Print.)

(How disposed of.)

(Action
completed.)

(Index.)

P. C. 10/1

21/1/48

Next Paper.

420

(Minutes.)

Mr. Evans first.

Please bring up again when the Home Office reply is
received and attach any papers leading up to our
inquiry on E 11974.W. Evans
(HVS EVANS)
5 January 1948.I understand that a question is to be asked in
the House of Lords tomorrow on whether the sanctions
of the Foreign Enlistment Act would be applied
against British subjects who entered the service of Arab
irregular forces in Palestine.I think a reply on the following lines would
be appropriate."Section 4 of the Foreign Enlistment Act 1870
provide that--- If any person, without the licence of His
Majesty, being a British subject, within or
without His Majesty's dominions, accepts or
agrees to accept any engagement, commission
or engagement in the military or naval
service of any foreign state at war with
any foreign state at peace with His Majesty--- He shall be guilty of an offence
against this Act and shall be punishable by

29470 F.O.P.

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fine and imprisonment.
Section 20 of the Act defines "foreign state" in the following wide terms

"Foreign state" includes any foreign prince, colony, province, or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any any foreign country, colony, province, or part of any province or people.

Whether Section 4 ~~applies to persons who~~^{might} would apply to British subjects exhibiting in Arab irregular force in Palestine is a legal problem which can only be settled when a case comes before the Courts."

I have discussed the above suggested reply with Mr. Vincent Evans of the Dept of the D.P.P. and also with Mr. Barr of the Home Office. Both considered it appropriate. So far as Mr Vincent Evans, Mr Barr and myself are aware there have so far been no cases before the Courts in which the Act has been interpreted with reference to facts similar to those suggested in the question.

I might add that I agree substantially with the D.P.P.'s opinion in his letter of 2nd January. Whether the Act would apply to circumstances such as are envisaged in paragraph 2(c) of our letter on E11974 is doubtful and would depend on the precise facts of each particular case. If ever we have to consider such cases with a view to prosecuting the case of R v Carlin 1870 L.R. 4 P.C. might usefully be referred to.

W.V. Evans
12/1.

Draft answer passed to C.O. by telephone
H.B. 19/1

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E 92

2 JAN

2nd January, 1948.

Our Reference: 1/Misc/88/4257/47.
Your Reference: E.11974/9373/31.

Confidential

Sir,

I have received and have considered the matters raised in your letter of December 17th.

2. In my opinion the question whether a British subject taking part in an Arab-Jewish conflict commits an offence depends upon whether his conduct contravenes the provisions of the Foreign Enlistment Act, 1870.

The common law high misdemeanour of entering into the service of a foreign state without the leave of the King is, as I understand the law, based upon the theory of allegiance, and it appears not to have been an offence at common law for British subjects to enter into the service of belligerent powers at peace with His Majesty unless the act involved a breach of duty to the King.

In any event, generally speaking, the common law ought not to be invoked to extend the ambit of the criminal law in a field in which the Legislature has defined by statute what conduct constitutes an offence.

3. To establish an offence under sec. 4 of the Foreign Enlistment Act the prosecution have to prove that the enlistment was "in the military or naval service of any foreign state at war with any foreign state at peace with His Majesty."

Sec. 30 of the same Act defines a foreign state in the following terms :- "Foreign State" includes any foreign prince, colony, province or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province or part of any province or people."

A court has, therefore, to be satisfied by evidence that the belligerent force concerned was exercising or assuming to exercise the powers of government in or over some part of any province or people. Recognition

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by His Majesty's Government, in my view, is immaterial for this purpose. Although a court will take judicial notice of the existence of a foreign state recognised by His Majesty's Government, in my opinion it would still be open to the prosecution, even where there is no such recognition, to establish as a fact that a particular person or persons constitute a "foreign state" within the meaning of the Foreign Enlistment Act.

At first sight it may appear somewhat anomalous that an insurgent force may be "a foreign state at peace with His Majesty" so that enlistment in the service of a government at war with the insurgents becomes an offence, but I consider that this is the clear effect of the sections quoted above, provided that the force is not engaged in hostilities against His Majesty and can be proved to be exercising or purporting to exercise power of government over any territory.

4. The prosecution have also to prove the existence of a state of war.

Again, in my opinion, this is a question of fact, and a declaration of war is not an essential ingredient. In the case of *R. v. Carlin* (L.R. 3 P.C. p.283) it was held that a body of insurgents acting together and undertaking and conducting hostilities constitute a foreign state at war. Reference may also be made on this point to the "*Eliza Ann*" (1 Dodson p.247) and to the "*Teutonia*" (4 L.R. P.C. p.179).

5. It follows that, in my opinion, in the circumstances outlined in paragraph 2, (a) and (b) of your letter both the Jewish and Arab states would be "a foreign state at peace with His Majesty" within the meaning of sec. 4 of the Foreign Enlistment Act, and that, in the event of hostilities between these states, it would be an offence for a British subject to enter into the military or naval service of either side.

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As to the situation visualised in paragraph 2 (c) I would be of the same opinion if it could be established that the belligerents were exercising or assuming to exercise the powers of government in or over any territory or people.

I am, Sir,

Your obedient Servant,

Theobald Mathew
T.

The Under-Secretary of State for Foreign Affairs,
Foreign Office,
S.W.1.

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6

E 1259

1948

PALESTINE

29 JAN 1948

Registry
Number

FROM

No.

Dated

Received
in Registry

E1259/92/31

P. Allen

Home Office

934/184/2

H. Burrows

26 Jan

29

Participation of British Subjects in Palestine Conflicts.

Refer 40 letter (E11974/9375/31) Has seen letter from Public Prosecutions, Office of Jan 2. and agrees generally with views expressed. Gives instance of statement made by various Dept. on this matter and asks 40. I consider whether the 40 should not take general responsibility for dealing with question of this kind.

Last Paper.

420

References.

(Print.)

(How disposed of.)

Dpt, P. Allen

Home Office

from H. Burrows

Comp. Feb 26

Martin B.D. Zepf.

Brig. Hamilton W.J.

Feb 25

P.T.O.

(Action
completed.)

Feb 25/2

(Index)

31/1/48

Next Paper.

2085

(Minutes.)

I should have thought the Home Office was the more appropriate Department to take general responsibility for this question. It might reply agreeing to a meeting but asking for the question of which Department should be responsible to be added to the agenda. Before drafting, however, I am sending this paper to Mr. Evans, who would presumably represent the Foreign Office at a meeting.

Mr. Evans

H. Bealey 5/2

is away for a few weeks.

I expect Mr. Buckett or I will attend. I agree the meeting should be held. I am inclined to think the F.O. is the best coordinating Dept. It is true one prosecution under the P.C. Act would be for the F.O. & D.P.P. but the general policy of instituting or not instituting proceedings under the Act is mainly (though not wholly) something

29470 F.O.P.

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which lies in the sphere of foreign relations. However the point might be put on the agenda -

Ch. L. Hume

Draft submitted

HB only 19/2

BAZ

W. ✓

by the way

This paper returned to me D-day. I
have arranged a meeting in Mr. Fitzmaurice's
room at 3 o'clock next Monday, the 8th
March.

Mr. Burrows
Fitzmaurice

H. B. 3/3

I have another meeting, but I do not think my presence is indispensable.

BARB

Pl. now see separate A. 3
record of meeting

Carpinus circeoides

(I have also informed Mr. Ford,
Canada House).

H73-167
13

apt W. P. Allen
(enc) To home office
from W. Reedy
Mar 22

Comp, W. Field. P.O.
in Sterling
office of P.O.F.
and Abartens W.O.
(enc) Mar 22

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Summary

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Nothing to be Written in this Margin.

Minutes.

In P.P. P. Allen, Home Office to Mr. Reelley 23/3.
J.B. e.p.m.
114

7 DB.
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Tel. No. : WHItEhall 8100

Ex

Our Ref. 934,184/2.

Your Ref. E. 11974/9373/31.

HOME OFFICE,
WHITEHALL, S.W.1.

26th January, 1948.

E 1259

Dear Burrows,

You sent us on 17th December an official letter about certain questions arising under the Foreign Enlistment Act, 1870, in the event of an Arab-Jewish conflict breaking out in Palestine after the termination of the British Mandate.

We have seen a copy of the letter which the Director of Public Prosecutions sent to you on 2nd January, and we are in general agreement with the views expressed in that letter on the legal points at issue.

This correspondence relates to what the position would be in the event of certain hypothetical developments. Are there not some grounds, however, for trying to co-ordinate now the policy of the various Departments on questions which are arising on, for example, the collection of names of potential volunteers by Arab organisations? I see that Lord Listowel made a statement on this point in the Debate in the House of Lords on Palestine on 20th January (Official Report, cols: 494-495). The Home Secretary had to answer a Question by Mr. Gallacher on 22nd January about the activities of an Arab organisation in London (Official Report, col. 60); and I see from the newspapers that the War Office have apparently issued a statement about ex-officers and men who are thinking of volunteering to fight for the Arabs in Palestine which not only reminds them that no soldier of the 1939-45 war has yet been demobilised, but goes on to refer to the provisions of the Foreign Enlistment Act, 1870.

It seems to us that there is considerable risk of misunderstanding and confusion if a variety of Departments are going to make statements on this matter which are perhaps not altogether consistent one with the other, and it seems that one Minister

B.A.B. Burrows, Esq.,
Foreign Office, S.W. 1.

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28 JAN 1948
SENT TO DEPT.
29 JAN 1948

only should answer 3 questions on this subject.

It is likely that questions of this kind will crop up with increasing frequency in the next few months and perhaps you would consider (a) whether the Foreign Office should not take a general responsibility for dealing with questions of this kind, and (b) if so, whether it would not be right, in consultation with the various departments that appear to be concerned, to try and settle what the policy should be to deal with these current problems.

Yours sincerely,

Philip Allen

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HB

Draft letter to
Mr. Allen,
Home Office,

(From Mr. Burrows)

*Large Address from
O201*

H. B. Bealey 19/2

RECEIVED IN DIVISION	
2 FEB 1948	
SENT TO TYPE	<i>23/2</i>
DESPATCHED	

*copies, with ref. to
Jm
Mr. Martin C.O.
BRL
Brig Hamilton W.O.*

RECEIVED IN DIVISION	
2 FEB 1948	
SENT TO TYPE	
DESPATCHED	

OUTFILE

FOREIGN OFFICE,

S.W.1.

25 February, 1948.

Thank you for your letter of the
26th January, No.934, 184/2, on the
applicability of the Foreign Enlistment Act
of 1870 ~~and~~ to the possible participation of
British subjects in an Arab-Jewish conflict
in Palestine. I agree that it would be
useful for the interested Departments to
coordinate their ideas on this subject, and
I suggest that we might hold a meeting for
this purpose together with representatives
of the Colonial Office and the War Office.
Thereafter I think it would probably be for
the Foreign Office to accept responsibility
for ensuring that the line laid down at the
meeting is maintained, but we should like to
leave this question also for decision at the
meeting. I will suggest a time by telephone
as soon as possible.

I am sending copies of *your* ~~this~~ *and of my reply* letter to
Martin at the Colonial Office and Hamilton
at the War Office.

*BARB
21.2*

NOTHING TO BE WRITTEN IN THIS MARGIN.

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OUT FILE

FOREIGN OFFICE, S.W. 1.

25th February, 1948.

(E 1259/92/31)

Dear Allen

Thank you for your letter of the 26th January, No. 934, 184/2, on the applicability of the Foreign Enlistment Act of 1878 to the possible participation of British subjects in an Arab-Jewish conflict in Palestine. I agree that it would be useful for the interested Departments to coordinate their ideas on this subject, and I suggest that we might hold a meeting for this purpose together with representatives of the Colonial Office and the War Office. Thereafter I think it would probably be for the Foreign Office to accept responsibility for ensuring that the line laid down at the meeting is maintained, but we should like to leave this question also for decision at the meeting. I will suggest a time by telephone as soon as possible.

I am sending copies of your letter and of my reply to Martin at the Colonial Office and Hamilton at the War Office.

Yours sincerely
J. B. Burrows
(B.A.B. Burrows)

P. Allen, Esq.,
Home Office.

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Registry

No. E1259/92/17

OUT FILE

Top Secret.
Secret.
Confidential.
Restricted.
Open.

Draft

Mr. Allen, H.O.

H
(from Mr. Bealey)

RECEIVED IN
DIVISION.
17 MAR 1948
SENT TO
TYPE
REBATCHED

NOTHING TO BE WRITTEN IN THIS MARGIN.

(2/47) (14728) Wt. 11488-144 250m 5/47 C.S.S.I.

begin as in
draft

Mr. Gellie, C.O.

Stirling, offic
of N.A.G.

Mr. Karteris, W.O.

X 3. 18 March 17/5-11
18/4

I enclose a copy of the record which has been made of the meeting recently held in Fitzmaurice's room here to discuss the applicability of the Foreign Enlistment Act to the present and foreseeable situation in Palestine.

You will no doubt let me know if you wish to suggest any amendment of the record.

I am sending copies of this letter with its enclosure, to ~~Butcher~~ and Gellie, Stirling, and Karteris, who will no doubt also suggest amendments if they think it necessary.

H.B. 14/3

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OUT FILE

FOREIGN OFFICE, S.W.I.

16th March, 1948.

(E 1209/92/51)

CONFIDENTIAL

I enclose a copy of the record which has been made of the meeting recently held in Filanovics's room here to discuss the applicability of the Foreign Enlistment Act in the present and foreseeable situation in Palestine.

You will no doubt let me know if you wish to suggest any amendment of the record.

I am sending copies of this letter, with its enclosure, to Stirling, Charlene and Dutch, who will no doubt also suggest amendments if they think it necessary.

Yours sincerely
(H. Beasley)

P. Allen, Esq.,
Home Office.

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ENLISTMENT IN PALESTINIAN FORCES.

Record of a Meeting held at the Foreign Office on
8th March, 1948.

The Meeting was attended by representatives of the Home Office, Colonial Office, War Office and Judge Advocate-General, and also by Mr. Beeley, Mr. Evans (part of the time) and Mr. Fitzmaurice of the Foreign Office. The conclusions which emerged can be summarised as follows:-

(1) There can be no doubt that the Foreign Enlistment Act, which is the only relevant piece of legislation, has no application to the case of Palestine so long as Palestine continues to be under our administration. There is therefore at present no legal power to prevent persons enlisting in any Palestinian bands or organisations.

(2) On the assumption that after the withdrawal of our administration a situation arises in which there can be said to be two sets of rival forces in Palestine contending with each other, then, on the rather peculiar definitions contained in the Foreign Enlistments Act, the Act will be applicable to enlistment in either of these forces.

(3) The Act does not have any retrospective operation; consequently it would not be possible to proceed, after the withdrawal of our administration against somebody who had accepted service before that date with Jewish or Arab organisations.

(4) In view of the shortness of time between now and the withdrawal of our administration it did not seem either necessary or desirable to introduce any special legislation to prevent enlistment at the present stage. After the withdrawal, if there exists a situation in Palestine in which it is undesirable for British subjects to enlist there, this situation will of itself be of a character to make the Act applicable.

(5) It follows that there was nothing we could do at present to prevent recruitment in this country or the opening of recruiting offices, but it would be possible to take such action when the Act became applicable.

(6) It was pointed out that even when the Act is theoretical applicable it is not as a rule very effective, as was discovered in the case of the Spanish Civil War, because there is very seldom any means of proving in advance that persons have accepted service in foreign forces or are leaving this country with intent to do so. There is, in fact, nothing in the Act to prevent persons (unless they do so in the form of an actual hostile expedition) from leaving this country and proceeding abroad the ordinary way. After that there is, of course, nothing to prevent them from making their way to Palestine and enlisting there. This will, of course, render them liable to prosecution under the Act, but such prosecution can only take place when they subsequently return here and the prospect of it will have a deterrent effect.

(7) On the other hand, it would be possible to prevent recruitment in this country once the Act is applicable by closing down the recruiting offices, because recruitment inducing persons to accept service in foreign forces, itself an offence under the Act. Apart from this there would be little effective that could be done when the Act is

applied

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the applicable other than issue of warnings that persons enlisting in Palestine will render themselves liable to prosecution and that masters of vessels which knowingly carry such persons may also be liable. If it were desirable to tighten up the position, special legislation would be necessary, but it was not easy to see how such legislation could really be more effective on these particular points than the Foreign Enlistment Act already was. There would always be the difficulty that you could not prevent persons leaving this country for an ostensibly innocent destination.

(8) It is agreed that the Home Office and Foreign Office should keep in close touch on the matter, particularly with regard to any question of actual prosecutions which might arise after the termination of our administration.

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Age	Percentage
18-29	85
30-49	80
50-69	75
70+	70

**HOME OFFICE,
WHITEHALL, S.W.1.**

23rd March, 1948.

1259 92 91 INDEXED

Dear Beeley,

31 MAR 1948

Thank you for your letter of 22nd March enclosing a note of the meeting about Palestine and the Foreign Enlistment Act.

The only comment I have is that there might be something to be said for adding a paragraph at the end to say that it was agreed that the Foreign Office should take responsibility for dealing with Parliamentary Questions and other enquiries about the general policy involved.

Yours sincerely,

Philip Allen

H. Beeley, Esq.,
Foreign Office,
S.W. 1.

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COPY

15

COLONIAL OFFICE,
CHURCH HOUSE,
GREAT SMITH STREET, S.W. 1.

IMMEDIATE

TOP SECRET

Foreign Secretary.

With reference to paragraph 4 of the minute to you from the Minister of Defence of the 27th April about British officers serving with the Arab Legion, I enclose a note on the three officers who are on the pensionable establishment of the Palestine Government. On the dissolution of the Palestine Administration it will be open to these officers to leave the Colonial Service, drawing compensation benefits which are accorded to officers of the Palestine Government who do not wish to be considered for other posts in the Service. As they will all have periods of leave due to them, their nominal service with the Palestine Government will continue beyond the 15th May. As far as the intentions of the three officers are known it is believed that they would wish to continue service with the Transjordan Government on direct agreement with that Government. In these circumstances they would be required to terminate their appointments in the Colonial Service.

2. I therefore recommend:

(a) That if the Transjordan Government require the services of these officers after the termination of the Mandate their continued service would only be permissible on direct engagement with the Transjordan Government and not on secondment from the Colonial Service.

(b) That, if King Abdullah directs the Arab Legion to conduct operations in Palestine, His Majesty's Minister, Amman, should request the Transjordan Government to permit Mr. Broadhurst and Mr. Lash to proceed on leave until their nominal employment by the Government of Palestine has been terminated and their position has been regularised or else, if the proposal of the Minister of Defence is accepted, restrict their employment in the manner prescribed for British Army Officers serving with the Arab Legion, while Brigadier Glubb, (who could not in such circumstances appropriately remain in Transjordan) should at once proceed on leave.

3. I should see no objection to consulting Sir Alec Kirkbride, if time permits, before final instructions in this sense are given.

4. I am sending a copy of this minute and its enclosure to Alexander.

(Intld.) L.

28th April, 1948.

*But they are
officers can
probably ask
for their
termination
of contract
benefit with
effect from
16th May
and keep
their
leave*

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16

TRANSJORDAN ARAB LEGION.

OFFICERS SERVING WITH THE ARAB LEGION WHO ARE ON THE
PALESTINE PENSIONABLE ESTABLISHMENT.

There are three officers in this category: they are as follows:-

1. Brigadier J.B. Glubb, C.M.G., D.S.O., O.B.E., M.C., who is Commanding Officer of the Arab Legion.

Date of birth: 16th April, 1897.

He was appointed Administrative Officer on the Palestine pensionable establishment on the 1st November, 1930, and seconded to Transjordan from the same date. He was appointed Officer Commanding the Arab Legion on the 24th June, 1939.

On the termination of the Mandate for Palestine and the withdrawal of the British Administration, Brigadier Glubb will be eligible to retire from the Palestine service taking pension due to him.

2. Mr. R.J.C. Broadhurst, Deputy Commander, Arab Legion.

Date of birth: 25th December, 1906.

He was appointed British Inspector, Palestine Police Force, on the 1st April, 1926, and subsequently Superintendent of Police on the 24th March, 1944. Mr. Broadhurst is a member of the Palestine Administration and a member of the Colonial Police Service on secondment to Transjordan.

He would be eligible on the withdrawal of the British Administration on the termination of the Mandate for Palestine to opt to remain in the Colonial Service or to retire from the Service taking compensation terms.

3. Mr. N.O. Lash, O.B.E.

Date of birth: 4th June, 1908.

This officer joined the Arab Legion on the 1st May, 1939, from which date he was posted to the Palestine Government Service for the purposes of pension. He holds the substantive post of Superintendent of Police, Palestine.

He would be eligible on the withdrawal of the British Administration on the termination of the Mandate for Palestine to opt to remain in the Colonial Service or to retire from the Service taking compensation terms.

Mr. Lash has, however, never served under the Palestine Government Administration and there is no obligation to find him an appointment elsewhere, even if he would accept one.

I understand, however, that all three officers have expressed a wish to continue to serve with the Transjordan Government on agreement with that Government, in which case their pension rights with the Palestine Government would cease, although they would in each case be eligible for compensation terms accorded to officers of the Palestine Government.

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1948

E

E 6046

17

PALESTINE

11 MAY 1948

Registry
Number

E 6046/92/31

FROM

Foreign Office

No.

(Mr. Pym)

Dated

Received
in Registry8 May
11 MayPosition of British Subjects fighting in Palestine
after 15 MayDiscusses the position under the
Foreign Enlistment Act, of British subjects
fighting in Palestine after 15 May, with
either Arab or Jewish armies.

Last Paper

E 1085

References

(Print)

(How disposed of)

(Action
completed)

(Index)

Next Paper

E 6916

34967

PUBLIC RECORD OFFICE

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FO 371/66628

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Minutes.

18
Enter separately

M.E. 4/10/48.

E 6046

MAY 1948

Nothing to be Written in this Margin.

Please see the minutes of a meeting recorded in ~~E 1259~~ E 1259/92/31 in particular the pages 4 and 6.

The question of the applicability of the Foreign Enlistment Act to ~~the~~ British subjects ~~now~~ fighting in Palestine after the 15th May now arises.

It would seem that British subjects might join the forces of:

- (a) the self-styled Jewish state
 - (b) the self-styled Arab state
 - (c) ~~the forces of~~ Arab gov^{ts} who are intervening in Palestine either on their own account or at the invitation of the self-styled Arab state
- category (c) is the one of the

not

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Minutes.

not inmediate importance since there are some half dozen British ~~off~~ subject employed S King Abdullah as officers in the Arab Legion.

~~Arab Legion may be considered~~

The question would appear to turn largely on what is a "state" in the circumstances likely to prevail in Palestine after the 15th May. Please see my minute in E 5523/4625/80.

Does Art 33 of the Foreign Enlistment Act enable us to say, in the absence of any rules for "home a license" that any British can enrol with any prince, state or potentate in Asia?

L. L. L. Pyman
3/5

If I understand correctly I am asked to advise as to the position under the Foreign Enlistment Act in the event of a Jewish State in Palestine being proclaimed by certain Jews and an Arab State in Palestine being proclaimed by certain

Arabs./

RECEIVED IN O.B.	
10 MAY 1948	
SENT TO DEPT.	
11 MAY 1948	

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Minutes.

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Arabs. It is a little difficult to determine how the Act would apply in such hypothetical cases. All the circumstances would have to be taken into consideration in deciding whether there were two foreign states involved within the definition of "foreign state" in Article 30. I think in the event supposed there almost certainly would be and the Act would be applicable to enlistment in the forces of either the proclaimed Jewish State or the proclaimed Arab State or of any other Arab State engaged in hostilities against the proclaimed Jewish State. See in this connection paragraph 2 of the minutes of the meeting of the 8th March.

2. I imagine that the British officers serving with the Arab Legion are given some sort of authority to do so. If they are and the Arab Legion becomes engaged in hostilities against a friendly State within the meaning of the Act it might be desirable to inform the officers that their authority is terminated.

3. Article 33 of the Act could not, in my opinion, have the meaning which Mr. Pyman suggests. It refers, I think, only to persons given leave or license under some other enactment.

W.V.J. Evans
(W.V.J. Evans)
5th May, 1948.

*After further discussion
with Mr. Evans I submit
a letter to Mr. Pyman.*

L.P.L. Pyman

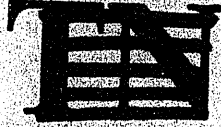

6/5

T.L. Smith

Barb
7.7

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1948	<div style="text-align: center;"> E  </div>		(Security Grading—to be Up-graded where Appropriate) 20
	TREATY AND NATIONALITY DEPT.		
	PALESTINE	<div style="text-align: center;">  </div>	E 7444
FROM E 7444/92/31	SUBJECT: ENLISTMENT OF BRITISH SUBJECTS IN FORCES NOW FIGHTING IN PALESTINE		
No.			
Dated			
Received			
(Outward Action)			
	Encloses Copy of :	References and Relevant Papers :	
	MINUTES — SEE WITHIN		
(Printing Instructions)			
(Referred to Legal Adviser)			
(Action completed)	(Main Indexed)		

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1948

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E 7444

21

PALESTINE

3 JUN 1948

Registry Number | E7444/92/31

FROM F.O. Minute
(Mr. Pyman)

No.

Dated 20 May 48

Received in Registry | 3 Jun 48

Enlistment of British Subjects in forces now fighting in Palestine.

Refers to Foreign Office telegram No. 340 to Amman (E6007/4625/91) E6046/92/31 also refers.

Foreign Enlistment Act appears to apply to non-Arab and non-Jewish personnel fighting with these forces. Best method of giving this publicity might be to arrange a question in the House of Commons. A draft is attached but prior reference may have to be made to the Home Office and War Office.

Last Paper

E7238

References

(Print)

(How disposed of)

H.O.
C.O.
C.R.O.
Sect. Office
M/Def.
V.O.
A.M.
Adm.
Attorney-General
Lord Chancellor's Office
Dir. Public Prosecutions
June 48

(Action completed)

C24/1

(Index)

Next Paper

E 7769

(Minutes.)

See within FO minute (Mr. Burrows) 28/5

"Extract" (Manchester Guardian) 31/5

Mr. Pyman 7/6

B.V. 15/6

2 Balfour 7/6

Everyone has now replied except the Adty & the A.M.
I have been assured by the A.M. (James) that their views are fully covered by the letter from the M.Y. Defence (E.7996) & by the Adty (Dadds) that their lordships will have no comments to offer.

Almost all the replies favour two minor & I think entirely reasonable amendments. The first is the insertion of the words "or engagement" after the word 'commission' in line 5. of the dft. reply. This follows the wording of the foreign enlistment act & means that other ranks will be covered as well as commissioned officers. The second is the substitution of the words "armed forces" for "military services" in the same line, as all three services will then be covered. In addition the C.R.O. wd. like us to insert the words "in the United Kingdom" after "H.M. Government" in the penultimate line of the dft. reply as we are not responsible

34987

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responsible for Dominion policy over recognition. This also I feel to be an entirely reasonable amendment.

There seems to be a considerable amount of diffidence about inserting the words date of May 15th in the draft reply. Most departments seem to feel that this is a question for the courts to decide, and that although they wd. not proceed against anyone who accepted an engagement before May 15th, the insertion of the words May 15th in the reply might place them in an invidious position as regards those who accept such engagements between May 15th & the issue of a public warning. One way ~~right~~ round this difficulty might be for the issue of the public warning to be arranged if this has not already been done.

The Lt. Chancellor's Office wd. like us to leave out the second para. of the dft. reply altogether, but I feel that this was added for obvious reasons of wh. his arguments in no way dispose. The Minister of Defence, supported by the W.O. wd. like prefer us to drop the question altogether. But I do not feel as he does that Mr. Swinburn's, Mr. Platts-Mills' questions of 26th May & the answers to them (see attached Hansard) cover the required ground. I think m/Def. & W.O. anxiety is primarily about British army officers seconded to Arab armies; & I feel that we may fairly safely assure them that officers seconded by H.M.G. do not come under the terms of the foreign enlistment act.

I have raylined in the proposed minor amendments in pencil on the top draft within

/and

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as soon as there is a finalised version I propose that I or someone else clear it by telephone with all concerned. This wd. also, incidentally, give Mr Cuthy White an opportunity to give the Commonwealth Govts. advance notice of the proposed question & answer.

Lance Thakell 17.vi.
LANCE THAKELL.

The Security Council resolution calls on us not to introduce fighting personnel into Palestine. We are bound therefore, I think, to take any steps that are open to us to prevent volunteers from going to join the forces of either side. We must therefore take steps to declare the Foreign Enlistment Act applicable to people who go off to fight for either side. This disposes of the contention at the Ministry of Defence and the Air Ministry (and the War Office) that it would be better not to make any announcement at all.

As regards the date on which our announcement will be considered to have made the Foreign Enlistment Act applicable to enlistment in forces of either side in Palestine, I think that it would be extremely unfair to any individuals who may, since May 15th, have gone off to join the forces of either side, to declare the date to be the 15th May. It may be that no Department would wish to prosecute anyone who joined either side between the 15th May and the date of our public announcement but the individuals concerned will not know this and it is not fair that they should feel that a criminal prosecution may be outstanding against them. I should therefore like to leave out the words from the 15th May onwards in the proposed draft reply and arrange for a supplementary on the following lines:-

Question.

From what date will persons who despite this announcement take service with the armed forces of either side be prosecuted?

Suggested Answer.

From the date of this announcement.

There is a point of some substance in the War Office reply (E 8136/92/31). They state that they understand that we are confident that the Act will not operate

/against

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By writing a letter to the Home Office I take it that we do not lay ourselves open to suggestion that we might have to prosecute people who joined within 500 miles before 15 May

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Minutes.

against any British officers seconded to the Arab Legion either before or after the 15th May. They derive this impression presumably from the provision in the Foreign Enlistment Act that British Subjects are not liable to penalties under the Act if they take service with the State concerned with the leave and licence of His Majesty. Secondment by the War Office to the Arab Legion would be taking service with King Abdullah with the leave and licence of His Majesty. This is a point which should be confirmed by our Legal Advisers.

The Director of Public Prosecutions (E 770/92/31) bases his opinion that the proposed reply states the legal position accurately on the assumption that the present position in Palestine is covered by 2(b) or 2(c) of our letter in E 11974/9373/31 of 1947. It seems to me that the situation there is covered, though only partially by 2(b).

We can I think accept all the minor amendments summarised by Mr. Thirkell in the second paragraph of his minute.

I attach a revised version of the ~~Proposed~~ draft for binning.

L.F.L. Pyman

(L.F.L. Pyman)

19th June, 1948.

N. Evans. for its first.

We shall then require a comprehensive minute for submission.

I am however doubtful whether in present circumstances the minute should recommend action on the lines proposed. Since the cease-fire came into force hostilities are presumably not

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not taking place within the 23
meaning of the act & it might
be rather undesirable to suggest
that they were necessarily going
to do so again.

BMB Burrows
19.6

1. I think it is at least doubtful whether the cease-fire makes any difference to the application of the Act. Though actual fighting is suspended the truce is at the moment temporary only and a truce really presupposes a state of war. However, it does add one more doubt as to the application of the Act to the present circumstances in Palestine.

2. As to whether an inspired question on the lines suggested is now opportune, a public announcement is not legally necessary to bring the Act into effect in the United Kingdom in respect of any situation though, owing to the doubts which the wording of the Act may raise in people's minds regarding its applicability to ~~this~~ particular case, it is, I believe, considered that it would be unfair, in circumstances in which doubt may exist, to prosecute anyone without the issue of some sort of public ~~warning~~. Whether a public ~~warning~~ should be given, therefore, depends mostly on whether a situation has arisen in which it may be desirable to prosecute, or ~~order~~ persons by a ~~warning~~ that they are liable to prosecution. In this connection our obligations to the United Nations are relevant. An "inspired question" might also be desirable to forestall a less conveniently worded question. Unless there is a case of necessity for the action proposed it might be better, for political reasons and because of the doubts that exist anyway as to the applicability of the Act and of the practical difficulties of actually enforcing it despite a public ~~warning~~, to postpone action until it really becomes urgent.

Nothing to be Written in this Margin.

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Minutes.

3. As regards the text of the draft reply:

(a) I agree that the words "from the 15th May, 1948 onwards" may be deleted. The point that the Act does not apply to persons who accepted a commission or engagement before the outbreak of hostilities is adequately covered by the last sentence of the first paragraph. I do not think the reply could be interpreted as an undertaking by the Government to prosecute.

(b) I agree with the other amendments.

(c) I agree that it is better to retain the second paragraph.

(d) *It is not very clear that the question and reply refer to persons serving in the forces of Transjordan & other Arab States - see C.O. letter. To meet this difficulty, I suggest the*

4. I do not much like the supplementary question and answer proposed by Mr. Pyman, because (a) it seems to be a declaration of an amnesty as regards persons who accepted a commission or engagement before the announcement; (b) it implies that the public announcement legally affects the position, *which it does not so.*

5. I must confess that I have some doubt as to whether the Act might technically apply to a British officer seconded to the Arab Legion after the 15th May. Article IV applies to any British subject who:

- (a) without the licence of His Majesty
- (b) accepts or agrees to accept any commission or engagement in the military or naval service of another foreign State at war with any foreign State at peace with His Majesty.

Article XV provides how a licence by His Majesty is to be granted for the purposes of the Act. It says "a licence by His Majesty shall be under the sign manual of His Majesty, or be signified by Order in Council or by proclamation of His Majesty." The Act would, therefore, technically apply to a seconded British officer unless His Majesty had given a licence in accordance with Article XV or unless a secondment does not involve acceptance of any commission or engagement in the Arab Legion. However, it is entirely within the discretion of the Crown whether to prosecute a person who has committed an offence under the Act, and I think we can be certain that no British officer seconded to the Arab Legion would, in fact, be prosecuted.

W V J Evans
(W. V. J. Evans)
23rd June, 1948

Nothing to be Written in this Margin.

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Mr Pyman 24

I imagine this is
affected by the question
discussed with Mr
Beckett to-day, whether
we accordelligence
to the 2 parties. If
so we might wait
till that question is
decided.

You may meanwhile
want the papers to
deal with Clubb.

GBB

20.5
Mr Evans considers that
the application of the design

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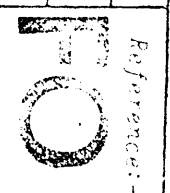
Enlistment Act is not
 affected by whether
 or not belligerency
 is granted by Italy.

WTL
 2/1/5

It would however
 perhaps be unwise to
 say ^{publicly} that there is a
 strategic group in Palestine
 for the purpose of the act.

WTL

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Minutes.

25

Enlistment of British Subjects in forces
now fighting in Palestine.

E-7444

3 JUN 1948

Please see Foreign Office
telegram No. 340 to Amman ~~within~~ 56007/4625/11
and 5. 6000/42/81.

(ficus) Hostilities are at present
certainly going on between the forces of
the self-styled Jewish State and certain
Arab Governments. The Foreign Enlistment
Act would therefore appear to apply to
persons who from now onwards go off to fight
on either side. It might be as well to let
this be known and probably the best way of
doing so would be to arrange for a private
notice question in the House of Commons.

I attach a draft which might
serve as a basis of discussion. It will be
necessary to obtain the concurrence of
the Home Office and, I think, of the War
Office in our action.

unbeknownst to the War Office

L.F.L. Pyman

(L.F.L. Pyman)

20th May, 1948.

1/14. O. letter 934184/10 of 16 June.

Mr. Evans for do.

I have discussed this with Mr
Ligmanic who has slightly modified
the draft. We shall have to be prepared
to give the definition of state for supplementaries.

We must clear now with C.O. CRO, Ho,
Sarkish Office, Attorney General, Lord Chancellor
/ Division

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Minutes.
Director of Public Prosecutions, Min of Defence, Coo

Am. Am.

8481 VOL 3 Off attached n/w Walker 27/5

In d'g. Am. Min.

8481

28.5

mtls

29.5

Nothing to be Written in this Margin.

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Foreign Enlistment Act 26

I have read a large number of papers on the application of the Foreign Enlistment Act to the Spanish Civil War.

The main points seem to be

- 1) The Act does apply to a Civil War, that is fighting between a part of a state and another state or part of the same state.
- 2) A declaration of belligerency by Hosts is not necessary for a 'state of war' for the purpose of the Act to exist.
- 3) British subjects who disobey the provisions of the Act have no claim to official help or protection abroad.
- 4) The Act applies to the colonies.
- 5) In the case of Spain, it was decided to issue a notice that the Act applied to persons fighting there.
- 6) The question of whether or not persons who enlisted before the issue of this notice should be prosecuted under the Act was considered to be political.

7) The then S/S for Foreign Affairs decided with the approval of the Attorney General & the Home Secretary that no one should be prosecuted under

W 966
37

W 3963
37

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Minutes.

under the Act who had enlisted
before the notice was published.

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L.F.L.P.

27

Draft Parliamentary Question.

To ask the Secretary of State for Foreign Affairs whether the provisions of the Foreign Enlistment Act of 1870 are held to apply to British Subjects who participate in hostilities in Palestine between forces serving the ^{Arab and} ~~self-styled~~ Jewish ^{authorities here.} ~~State and~~ those serving certain Arab Governments.

Draft Reply.

"Yes Sir, I am advised that the ~~terms of this act~~ ^{present circumstances} apply to persons who from the 15th May, 1948, onwards accept or agree to accept any commission in the military service either of the Jewish or Arab authorities in Palestine. I am advised that ~~it is doubtful if the Act applies~~ ^{does not apply} to persons already serving in such forces before the outbreak of hostilities. ~~I should like to add that the fact that the Foreign Enlistment Act of 1870 may be held to apply to certain persons in present circumstances in no way implies recognition by His Majesty's Government of the Jewish State which has been proclaimed in Palestine.~~"

having
requested
certain
definition
as to
end of the
Act.

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The Act is worded in such a way as to make it applicable to cases of hostilities between rival factions in a foreign country. Consequently the fact that it may be held to apply to certain persons

Registry No. 57444/92/3

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Secret.
Confidential.
Restricted.
Open.

OUT FILE

11 Apts. 328
+ Oc. 4 June 4/11

Draft.

W/S for the Home Dept.

W/S for Colonies

W/S for Commonwealth Relations

W/S for Scotland

W/S for War

W/S for Air

Secy to Admiralty

Attorney-General's Office

Permanent Secy to the Admiralty

Director of Public Prosecutions

Devonshire St., Piccadilly, W.1.

28.5

Mr. Justice Hill

NOTHING TO BE WRITTEN IN THIS MARGIN.

G.S.S.

1. W/S to the correspondence between the Home Office & the Attorney-General's Office which took place in Aug. & Sept. 1936 concerning the Spanish Civil War

I am in 212 to transmit herewith a draft Parliamentary Question and Answer which it is proposed to arrange shortly on the subject of the Foreign Enlistment Act in relation to the present hostilities in Palestine. Mr. Benin considers that it would be as well for the position of possible British volunteers to be made clear and he will accordingly be grateful for your early observations on the enclosed draft.

Mr Benin is advised that although it is not absolutely certain that the Act can be held to apply to the present hostilities in Palestine, a sufficiently strong case for its application could be made out to justify the issue of some such warning as is contained in the suggested reply to the Parliamentary Question. In this connection the question of the date on which the

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The Act shall be held to apply is
open to some question. May 15 is
the date of the termination of the British
Mandate in Palestine and the starting
~~point~~
the armed intervention by the Arab
States has been inserted in the
draft. But in the case of the Spanish
Civil war, the operative date (in 1937)
was that on which the public
notice was issued in the press.
I am to ask that you will
give your views on this point.

A similar letter is being sent

to

15/
2/6

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FOREIGN OFFICE, S.W.1.

OUT FILE

4th June, 1948.

Immediate

Sir,

I am directed by Mr. Secretary Bevin to transmit herewith a draft Parliamentary Question and Answer which it is proposed to arrange shortly on the subject of the Foreign Enlistment Act in relation to the present hostilities in Palestine. Mr. Bevin considers that it would be as well for the position of possible British volunteers to be made clear and he will accordingly be grateful for your early observations on the enclosed draft.

2. Mr. Bevin is advised that although it is not absolutely certain that the Act can be held to apply to the present hostilities in Palestine, a sufficiently strong case for its application could be made out to justify the issue of some such warning as is contained in the suggested reply to the Parliamentary Question. In this connexion I am to refer to the correspondence between this department and the Home Office and the Attorney-General which took place in August and September 1936 concerning the Spanish Civil War.

3. The question of the date on which the Act shall be held to apply is open to some question. 15th May the date of the termination of the British Mandate in Palestine and the start of the armed intervention by the Arab States has been inserted in the draft. But in the case of the Spanish Civil war, the operative date (in 1937) was that on which the public notice was issued in the press. I am to ask that you will give your views on this point.

4. A similar letter is being sent to the Colonial Office
Home Office.

Commonwealth Relations Office
Scottish Office
Ministry of Defence.
War Office
Air Ministry
Admiralty
Attorney-General's Office
Lord Chancellor's Office
Public Prosecutions Office.

I am,
Sir,
Your obedient Servant,

The Under Secretary of State,
Home Office
The Under Secretary of State,
Colonial Office ✓
The Under Secretary of State,
Commonwealth Relations Office ✓
The Under Secretary of State,
Scottish Office ✓
The Permanent Secretary,
Ministry of Defence ✓
The Under Secretary of State,
War Office
The Under Secretary of State for Air,
Air Ministry
The Secretary
of the Admiralty
The Secretary
to the Attorney-General's Office ✓
Permanent Secretary
to the Lord Chancellor's Office ✓
The Director of Public Prosecutions. ✓

Signature J. G. S. BEVIN
for B.A.B. BURROWS

✓ = reply received

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(E 7444/92/31)

Draft Parliamentary Question

To ask the Secretary of State for Foreign Affairs whether the provisions of the Foreign Enlistment Act of 1870 are held to apply to British subjects who participate in hostilities in Palestine between forces serving the Arab and Jewish authorities there.

Draft Reply

Yes, sir. I am advised that the terms of this Act do in present circumstances apply to persons who, from the 15th May, 1948, onwards, accept or agree to accept any commission in the military services either of the Jewish or of the Arab authorities in Palestine. I am advised that the Act does not apply to persons already serving in such forces before the outbreak of hostilities.

The Act is worded in such a way as to make it applicable to cases of hostilities between rival factions in foreign territory. Consequently, the fact that it may be held to apply to certain persons in present circumstances in no way implies recognition by His Majesty's Government of the Jewish State which has been proclaimed in Palestine.

30

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11 blue 1870. 131

Draft Parliamentary Question.

To ask the Secretary of State for Foreign Affairs whether the provisions of the Foreign Enlistment Act of 1870 are held to apply to British subjects who participate in hostilities in Palestine between forces serving the Arab and Jewish authorities there.

Draft Reply.

Yes, sir. I am advised that the terms of this Act do in present circumstances apply to persons who, from the 15th May, 1948, onwards, accept or agree to accept any commission in the military services either of the Jewish or of the Arab authorities in Palestine. I am advised that the Act does not apply to persons already serving in such forces before the outbreak of hostilities.

The Act is worded in such a way as to make it applicable to cases of hostilities between rival factions in foreign territory. Consequently, the fact that it may be held to apply to certain persons in present circumstances in no way implies recognition by H.M.G. of the Jewish State which has been proclaimed in Palestine.

Approved by
Mr. [Signature]

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Draft Parliamentary Question.

To ask the Secretary of State for Foreign Affairs whether the provisions of the Foreign Enlistment Act of 1870 are held to apply to British subjects who participate in hostilities in Palestine between forces serving the Arab and Jewish authorities there.

Draft Reply.

Yes, sir. I am advised that the terms of this Act do in present circumstances apply to persons who, from the 15th May, 1948, onwards, accept or agree to accept any commission in the military services either of the Jewish or of the Arab authorities in Palestine. I am advised that the Act does not apply to persons already serving in such forces before the outbreak of hostilities.

The Act is worded in such a way as to make it applicable to cases of hostilities between rival factions in foreign territory. Consequently, the fact that it may be held to apply to certain persons in present circumstances in no way implies recognition by H.M.G. of the Jewish State which has been proclaimed in Palestine.

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(B 7444/92/31)

DRAFT PARLIAMENTARY QUESTION

To ask the Secretary of State for Foreign Affairs whether the provisions of the Foreign Enlistment Act of 1870 are held to apply to British subjects who participate in hostilities in Palestine between forces serving the Arab and Jewish authorities.

DRAFT REPLY

Yes, Sir. I am advised that the terms of this Act do in present circumstances apply to persons who accept or agree to accept any commission or engagement in the armed forces either of the Jewish or of the Arab authorities involved in the hostilities. I am advised that the Act does not apply to persons already serving in such forces before the outbreak of hostilities.

The Act applies to cases of hostilities between rival factions in foreign territory. Consequently, the fact that it may be held to apply to certain persons in present circumstances in no way implies recognition by His Majesty's Government in the United Kingdom of the Jewish State which has been proclaimed in Palestine.

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OUT FILE

34

(E 7444/92/31)

Draft Parliamentary Question

To ask the Secretary of State for Foreign Affairs whether the provisions of the Foreign Enlistment Act of 1870 are held to apply to British subjects who participate in hostilities in Palestine between forces serving the Arab and Jewish authorities ~~there~~.

Draft Reply

Yes, sir. I am advised that the terms of this Act do in present circumstances apply to persons who, ~~from the 15th May, 1948, onwards~~ ^{armed forces} accept or agree to accept any commission in the ~~military services~~ ^{involved in the hostilities} either of the Jewish or of the Arab authorities ~~in Palestine~~. I am advised that the Act does not apply to persons already serving in such forces before the outbreak of hostilities.

The Act ~~is worded in such a way as to make it applicable~~ ^{applies} to cases of hostilities between rival factions in foreign territory. Consequently, the fact that it may be held to apply to certain persons in present circumstances in no way implies recognition ^{in the United Kingdom} by His Majesty's Government of the Jewish State which has been proclaimed in Palestine.

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35

Mr. Breley.

after a brief resumption
the P.Q. on the Foreign
Enlistment Act is being
put back in cold storage
again.

4. 19. VIII

Divm.

Please ~~then~~ put
this away for the present,
and b.v. 15/9.

H.B. 20/8

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In December of last year we considered possible measures that would be taken against British subjects who sought to take part in an Arab-Jewish conflict should one, as it in fact did, break out at the end of the Mandate, and whether, in this connexion, we could make use of paragraph 4 of the Foreign Enlistment Act, which reads as follows:

"If any person, without the license of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty, and in this Act referred to as a friendly state, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid, -

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour."

2. On the 4th June we sent out to Government Departments concerned the draft of a Parliamentary Question and answer which it was proposed to arrange in the House about the application of the Foreign Enlistment Act to the hostilities which were then in progress in Palestine. As a result of subsequent correspondence, a number of minor amendments were made to this P.Q. and answer which are incorporated in the redraft now submitted. The question was, at this time, lent additional emphasis by the Security Council Resolution calling on us not to introduce fighting personnel into Palestine.

3. We must now consider whether this is in fact a good moment for this P.Q. to take place. In a minute in E 7444 attached, Mr. Burrows doubts whether it would be opportune, as there is a cease-fire in force and hostilities are not taking place within the terms of the Act, and it is perhaps rather undesirable to suggest that they might do so again. Mr. Evans, in a minute on the same jacket, points out that the existence of a cease-fire also supposes a state of war and that to this extent the Act still applies, but he also agrees that this is not perhaps an opportune moment for the subject to be raised, and suggests that it might be better to postpone action until such time as the application of the Act may again become an urgent question.

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4. Should it, however, be decided to go ahead with the proposed P.Q. and answer, we should then have to decide the date from which the enforcement of the Act is to take place and whether the issue of a public warning is necessary. In fact the Act would apply from the 15th May, the date on which fighting started, but it is doubtful, in view of the obvious unfairness of such a course, whether the Courts would prosecute anyone who infringed the terms of the Act before a P.Q. had been asked or a public warning issued. Mr. Evans suggests in his minute that the issue of a public warning might, like the proposed P.Q. and answer, be left until the situation may again demand it.

5. If adopted, the revised version of the proposed P.Q. and answer would have to be cleared again with the Government Departments who were originally consulted.

Lance Thirkell.
L. Thirkell.
14th August, 1948.

I am inclined to doubt whether we need pursue this at present

B.A.B. Burrow
16.8

I think we might hold this up on sleeve. Parliament in any case will only be sitting for a short space in September, so that the time is not opportune for a P.Q.

A. J. J. J. J.
17/8

Aug 18

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Tel. No. WHitehall 8100

Ext.

Any communication on the subject of this letter should be addressed to:

THE UNDER SECRETARY
OF STATE
HOME OFFICE,
LONDON, S.W.1

and the following number quoted—

934,184/10.

Your Ref. E 7444/92/31.



HOME OFFICE,
WHITEHALL

16th June, 1948.

Sir,

I am directed by Mr. Secretary Ede to refer to your letter of 4th June, with which was transmitted a draft Parliamentary Question and answer on the subject of the application of the Foreign Enlistment Act to the present hostilities in Palestine.

Mr. Ede is in general agreement with the amendments suggested by the Director of Public Prosecutions in his letter of 9th June. He considers, however, that it would be better to omit from the answer the words "from the 15th May onwards", since it is a matter for the courts to decide whether on the date when the engagement was entered into the circumstances were such that the Act applied.

I am, Sir,
Your obedient Servant,

Philip Allen

The Under-Secretary of State,
Foreign Office, S.W. 1.

E.D.V.N. Please
Enter. a.a. 1
17:vi.
37

E 7444/92/31

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E

38

E 10339

1948

PALESTINE

4 - AUG 1948

Registry Number } E10339/92/31
TELEGRAM FROM
B.M.E.O.
No. 279
Dated 31st July
Received 4th Aug
in Registry

Position of British Deserters serving with Jews and Arabs.

Question of British deserters is raised over the case of the two, Corporal Franks and Private Higgs now reported captured by the Jews while serving with the Arabs.
G.H.Q. have been asked whether it would be possible to approach the Jews to obtain the release of these men as a favour and to do like wise with the Arabs to get back any deserters who may be employed by them.

Last Paper.

8136

References.

(Print.)

(How disposed of.)

S. P. ...
Aug 5

Del) Kharfa ...
E 11493/92/31

(Action completed.)

Cl 10/19

(Index)

4/1/48

Next Paper.

E 10437

(Minutes.)

I am not sure about the legal position of deserters from one army who are captured by a second while fighting for a third. The middle east military legal authorities do not think there are any legal grounds for claiming the extradition of the men concerned. I think that any general approach on the subject on either legal or any other grounds would be unacceptable to both Arabs & Jews, nor I think that we must do the best we can for any British subjects so involved treating each case as an individual one.
Lance Rickell.
5: viii

Legal Adviser 11/6/48
Consul Dept.

Yes: we ought to do what we can but we have no very strong legal basis for claiming the men. Our mission must just see what they can do.

I do not think that there is any legal basis for claiming extradition
J. P. ...
Aug 6

32003 F.O.P.

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If there men. There can be
no question of an extradition
treaty with the Jews; and however,
it is unlikely that the
offences of which these men of this type
might be accused would
fall within the offences of
any extradition treaty which
we may have with ^{any} Arab
State.

J. Adallat

9/8

I have spoken to W.O. (Capt. MAUDE SLO 3477 Xn 640).
who say that they agree that there are no legal
grounds for the extradition of these two men; but
that their partly under-secretary wd. like to see
them returned, both so that disciplinary action can
be taken against them & because they are British
subjects. I suggest we ask Mr. MARRIOTT whether
he thinks any useful purpose wd. be served by
his making an informal approach to the Jews
asking that these two men be returned, so that
he can take disciplinary action against them
can be taken. I think that any general
approach such as that suggested in Para 3 of B.M.E.D.
Tel. wd. be unwise, & that each case shd. be
treated separately as it arises.

Launce Plunkett 20:VIII

See draft a tel. to Mr. Marriott & submit

Mr. Churchill

I have had B.M.E.D. Tel. No 479 repeated to
Haifa & Jerusalem, & submit a draft tel. to Haifa.

Launce Plunkett 31:VIII

I notice that the last sentence of the B.M.E.D. Telegram also
seems to invite a reply, which has so far not been given.

Launce Plunkett
29/9

See F 11493/92/31

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Nothing to be Written in this Margin.

Minutes.

See new E. 11493.

47.35x.

39

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40
10339

CYPHER/OTP

DEPARTMENTAL DISTRIBUTION

FROM B.M.E.O. (CAIRO) TO FOREIGN OFFICE

No. 279.

D: 7.22 p.m. 31st July, 1948.

31st July, 1948.

R: 8.40 p.m. 31st July, 1948.

CONFIDENTIAL

British deserters with Jews and Arabs.

G.H.Q. raise the question of two deserters, Corporal Franks and Private Higgs now reported captured by the Jews while serving with the Arabs. They have been approached by the International Red Cross with a view to obtaining information as to the location and conditions of these two men but are now considering the possibility of securing their return to the army authorities.

2. Opinion of G.H.Q. legal authorities is that no grounds exist for extradition. They have however asked whether it would be possible to approach the Jews to obtain the release of these men as a favour and to do likewise with the Arabs to get back any deserters of ours who may be employed by them.

3. It seems to me that it would be extremely unlikely we should meet with anything but a rebuff from the Jews and the same is highly probable with the Arabs who are at the present time harbouring considerable resentment against us. I would not recommend any approach to the Arabs, but if you wish I will sound Azzam when I see him.

[Copy sent to Middle East Secretariat]

@@@

AUG 1 1948

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~~RESTRICTED~~
~~SECRET~~

L.
T.

Lee E 11493/92/31 F.O.

September 1948.

Despatched

M.

Draft.

Haifa

CONFIDENTIAL

Telegram.

No.....

(Date).....

Repeat to :—

Jerusalem
B.M.E.O. Cairo

Addressed to Haifa telegram No. of the
. Repeated for information to
Jerusalem and B.M.E.O., Cairo.

B.M.E.O. telegram No. 279 [British
deserters apprehended by the Jews].

I agree with the view of the Middle East
legal authorities that there are no legal
grounds for the extradition of these men. At
the same time they are still British subjects
whose interests we must look after and they
are also wanted by the War Office, who wish to
take disciplinary action against them.

2. Do you think that any useful purpose
would be served by your making an informal
approach to the Jewish authorities asking for
the return of these men, explaining at the
same time that they are deserters who are wanted
so that disciplinary action ^{can} be taken against them
by the War Office?

3. I am not considering any general
approach to either Jews or Arabs on this
subject but propose to deal with each case as
it arises.

~~Ex-Clair.~~
~~Code.~~
Cypher.

Distribution :—

Departmental

Copies to :
D.M.
Capt. Maude,
War Office.
Room 207
20 EATON SQ

lance Thirkell. 31.viii
H. Bailey 1/9

NOTHING TO BE WRITTEN IN THIS MARGIN.

(13559) Wt. 49897-140 100m 3147 G.S.S. Cp 620

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20 8481	E PALESTINE B	42 E 11493
Registry Number E11493/92/31 TELEGRAM FROM Mr. Marriott, Haifa. No. 542. Dated 1st Received in Registry Sept: 2nd	<u>Position of British deserters captured by Jews.</u> <u>Mr. Beilin promises to speak to authorities in Tel Aviv.</u> Refers to BMEC tel: 279 (E 10339/92/31) Mr. Marriott spoke to Mr. Beilin about these prisoners. Rptd) Jerusalem, BMEC.	
Last Paper. E 10437 References.	(Minutes.) I submit a ndraft of my tel: on E. 10339. in the light of Mr MARRIOTT's tel: within. <i>1ance Thiel tel. 3:1x.</i> <i>Disputed 4/9</i>	
(Print.) 8) Oct 1st 1942 Tel) BMEC 1020 4 Sept Rptd) Jerusalem 283 Haifa 505 8) Capt. W. O. (relap) 10 Sept.		
(Action completed.) 10/19	(Index) 31/10/42	
Next Paper. E 11692		

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E 43
[This telegram is of particular secrecy and should be retained by the authorised recipient and not passed on].

Cypher/OTP

DEPARTMENTAL DISTRIBUTION

FROM HAIFA TO FOREIGN OFFICE

Mr. Marriott
No. 542.

D: 6.46.p.m. September 1st, 1948.
R: 8.47.p.m. September 1st, 1948.

September 1st, 1948.

Repeated to Jerusalem,
B.M.E.O. (Cairo).

E 11493

IMPORTANT
SECRET.

E 10339/92/21
Addressed Foreign Office telegram No. 542, repeated to Jerusalem and British Middle East Office (Cairo).

British Middle East Office (Cairo) telegram No. 279 to Foreign Office not repeated to Jerusalem.

I mentioned matter of British deserters held by Jews as prisoners of war in a general way to Berlin this afternoon. He promised to ask Tel Aviv authorities whether there were any they would like to see out of the country and under what conditions.

Foreign Office please pass to Jerusalem and British Middle East Office (Cairo) as my telegrams Nos. 189 and 289 respectively.

[Repeated to Jerusalem and B.M.E.O. (Cairo)]

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2 SEP 1948

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Registry 11492/92/31
No. E 10339/92/51

Top Secret
Secret
Confidential
Restricted
Open

L.T.

Draft.

Telegram to:-

B.M.E.O.

No. 1020

(Date) 9.4.48

Repeat to:-

Jerusalem 783

Haifa 555

Middle East
Land Forces

RECEIVED IN C.B.

8 SEP 1948

SENT TO DEPT.

En-Clair.

Code

Cypher.

Distribution:-

Departmental

Copy to:

D.M.
Capt. Moore Maude
War Office.

Room 207
20 EATON ST
Janczinski. 3:ix.

F.O.

CYPHER

(Date) 4 September 1948

Despatched 25/9/48

[Security classification] CONFIDENTIAL
-if any

Addressed to B.M.E.O.

telegram No. 1020 (date) 4.9.48

repeated for information to Jerusalem, Haifa.

Your Telegram No. 279 [British deserters
apprehended by the Jews]

I agree with the view of the Middle East
legal authorities that there are no legal
grounds for the extradition of these men. At
the same time they are still British subjects
whose interests we must look after and they
are also wanted by the War Office, who wish to
take disciplinary action against them.

2. I think there is no further action we can
take in this case until we know the results of
the approach reported in Haifa Telegram No. 542.
3. I agree with you that it would not be wise
to make any general approach to the Arabs on this
subject, nor do I think it advisable for you to
approach Azzam, unless a specific case arises in
which you feel it necessary to do so.

D.B.
4/ix

NOTHING TO BE WRITTEN IN THIS MARGIN.

124615 W. 34382/162 50,000 12/47 A & E W. Ltd. Cp. 685

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DEPARTMENTAL DISTRIBUTION

FROM FOREIGN OFFICE TO BRITISH

MIDDLE EAST OFFICE CAIRO

No: 1020

4th September 1948

D.5.25.p.m.6th September 1948

Repeated to Jerusalem No:783
Haifa No: 555

CONFIDENTIAL

Addressed to British Middle East Office Cairo telegram
No: 1020 of 4th September repeated for information to
Jerusalem, Haifa.

Your telegram No: 279 [British deserters apprehended
by the Jews].

I agree with the view of the Middle East Land Forces
legal authorities that there are no legal grounds for
the extradition of these men. At the same time they are
still British subjects whose interests we must look after
and they are also wanted by the War Office, who wish to take
disciplinary action against them.

2. I think there is no further action we can take
in their case until we know the results of the approach
reported in Haifa telegram No: 542 [of September 1st].

5. I agree that it would not be wise to make any
general approach to the Arabs on this subject, nor do I
think it advisable for you to approach Azzam, unless
a specific case arises in which you feel it necessary to
do so.

X:X:X:

45

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21 1948	<div style="font-size: 2em; font-weight: bold;">E</div> <div style="border: 1px solid black; padding: 2px; display: inline-block;">E11692</div>	46 PALESTINE B
<p>Registry Number E 11692/92/31</p> <p>FROM C.R.O. (comd)</p> <p>No. F.2781/253</p> <p>Dated 6th</p> <p>Received in Registry 8th Sept.</p>	<p><u>Ceylon and the Foreign Enlistment Act.</u></p> <p>Letter to C.R.O. from UK High Commissioner, Colombo discusses case of an ex member of Ceylon Defence Force wishing to join the Egyptian Forces to defend the Holy Land. The Attorney-General, Ceylon does not think such applications should be forwarded.</p>	
<p>Last Paper</p> <p>E 11493</p> <p>References</p> <p>(Print)</p> <p>(How disposed of)</p>	<p style="text-align: center;"><i>CEYLON</i> (Minutes.)</p> <p>The Singalese would do best to stick to the advice given to them by the High Commissioner's Office, (Paragraph 2 within), and reference for forwarding this application to the Egyptians in view of the United Nations embargo on the despatch of military volunteers to Palestine, (the more especially in view of Ceylon's application for membership of the U.N.). As the High Commissioner's Office have pointed out there is nothing to stop this man from approaching the Egyptians directly should he wish to do so.</p> <p>The employment of the Foreign Enlistment Act is a doubtful weapon. It can, I believe, technically be applied to the present hostilities in Palestine, but we ourselves are not applying it, as its application might be invidious in view of the fact that no public warning about its application has been issued. I think that the Singalese Attorney General's opinion that the Act applies in that the State of Israel is a foreign state applies with H.M.G. is an inaccurate one, in so far as H.M.G. do not consider any such state to exist. It might be worth pointing this out to the C.R.O.</p> <p style="text-align: right;"><i>Lance Thirkell.</i> (L.G. Thirkell) September 11th 1948.</p> <p>Mr. Evans, <i>SA</i> South East Asia Department.</p> <p style="text-align: right;"><i>Sept. 13</i></p> <p>The Attorney-General's ^{probably} opinion is correct. What he means is that the Jewish authorities are a foreign state not in the meaning of the Act - not for the purposes of international law.</p> <p style="text-align: right;"><i>W.G. Evans</i></p> <p>* Whether it is or not can only be finally established when a case comes before the Court.</p> <p style="text-align: right;">As</p>	
<p>(Action completed)</p> <p><i>CS 29/9</i></p>	<p>(Index)</p> <p><i>24/11/48</i></p>	<p>Next Paper</p> <p>E 11815</p>

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C.L. Dept

10 Sept. 21

Print
25.4

1. The first point to be noted is that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the Americas (CLA) in the United States. It is therefore necessary to state that the Commission is not in a position to make any statement regarding the activities of the CLA in the United States.

2. The second point to be noted is that the Commission has received information from the Government of the United States regarding the activities of the CLA in the United States. It is therefore necessary to state that the Commission is not in a position to make any statement regarding the activities of the CLA in the United States.

3. The third point to be noted is that the Commission has received information from the Government of the United States regarding the activities of the CLA in the United States. It is therefore necessary to state that the Commission is not in a position to make any statement regarding the activities of the CLA in the United States.

4. The fourth point to be noted is that the Commission has received information from the Government of the United States regarding the activities of the CLA in the United States. It is therefore necessary to state that the Commission is not in a position to make any statement regarding the activities of the CLA in the United States.

5. The fifth point to be noted is that the Commission has received information from the Government of the United States regarding the activities of the CLA in the United States. It is therefore necessary to state that the Commission is not in a position to make any statement regarding the activities of the CLA in the United States.

6. The sixth point to be noted is that the Commission has received information from the Government of the United States regarding the activities of the CLA in the United States. It is therefore necessary to state that the Commission is not in a position to make any statement regarding the activities of the CLA in the United States.

7. The seventh point to be noted is that the Commission has received information from the Government of the United States regarding the activities of the CLA in the United States. It is therefore necessary to state that the Commission is not in a position to make any statement regarding the activities of the CLA in the United States.

8. The eighth point to be noted is that the Commission has received information from the Government of the United States regarding the activities of the CLA in the United States. It is therefore necessary to state that the Commission is not in a position to make any statement regarding the activities of the CLA in the United States.

9. The ninth point to be noted is that the Commission has received information from the Government of the United States regarding the activities of the CLA in the United States. It is therefore necessary to state that the Commission is not in a position to make any statement regarding the activities of the CLA in the United States.

10. The tenth point to be noted is that the Commission has received information from the Government of the United States regarding the activities of the CLA in the United States. It is therefore necessary to state that the Commission is not in a position to make any statement regarding the activities of the CLA in the United States.

11-2-1964

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D.O.3a.

To Mr. J.G. Beith *entire*
Foreign Office

No.

Subject. **11692**

F. 2781/253. Ceylon and *E*
the Foreign
Enlistment Act.

Reference to previous correspondence: *47*

With the compliments of

Mr. E.R. Sudbury

A copy has also been sent to

Commonwealth Relations Office,
Downing Street,

6/9/1948

DS 51505/1/77 1m 2/48 DL

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DUPLICATE

Office of the U.K. High Commissioner,
Secretariat Building,
COLOMBO.

48

Ref: Z-1/10.

25th August, 1948.

Dear Omarod,

It may be of interest to you to know that we were recently approached informally by the Ministry of External Affairs for advice on the action they should take in regard to a letter they had received from an ex-member of the Ceylon Defence Force requesting them to forward to the Commanding Officer of the Egyptian military forces an application volunteering his services in defence of the Holy Land. The Ministry stated that they had consulted their legal authorities in regard to the question as to whether or not it was lawful for a Ceylonese to volunteer for service in the armed forces of a foreign country, but asked our advice on the general question as to whether it would be advisable for them to forward this application to the Egyptian authorities, having in mind the fact that it would be contrary to the United Nations precepts if they were to appear to sponsor in any way an attempt to enlist for service in Palestine.

2. We replied that in our opinion it would be unwise to forward this application since it might well be construed as sponsoring, or at any rate, assisting, an attempt to enlist for service in Palestine and that embarrassing repercussions might ensue if it leaked out in Cairo that such an application had been received through Ceylon Government official channels, though there would seem to be nothing to stop the person concerned getting in touch direct with the Egyptian recruiting authorities himself. The Ceylon authorities have now sent us a copy of the Attorney-General's opinion on the legal question involved and have told us that they have refused to forward the request. I attach below a copy of the Attorney-General's opinion. I do not imagine that there is any further action that you would wish us to take in this matter and unless I hear from you on the subject I shall assume that the view that the Ceylon authorities have formed of the matter is the correct one.

"Section 4. of the Foreign Enlistment Act penalises any person who is a British subject and who, without the licence of His Majesty, accepts or agrees to accept any commission or engagement in the Military or Naval Service of any Foreign State at War with a Foreign State at peace with His Majesty. A Foreign State as defined in this Act includes any person or persons exercising or assuming to exercise the powers of Government in or over any foreign country. While it is no doubt true that His Majesty's Government in Ceylon has not recognised the State of Israel it would, nevertheless, appear that the State of Israel is a Foreign State within the meaning of this Act and since it is at peace with His Majesty's Government, any British subject who now enlists in the armed forces of Egypt would be committing an offence under section 4. of the Foreign Enlistment Act. In the circumstances I do not think that it would be proper to forward Mr. Sallay's application to the Egyptian authorities."

Yours sincerely,

(Signed) J. B. HUNT

R.G. Omarod, Esq.

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23
1948

PALESTINE

E 12594

49

Registry Number E 12594/92/31

FROM Sir H. Dow,
Jerusalem.

No. (44/16/48)

Dated 18th

Received in Registry 27th Sept.

Details of certain British deserters at present with Jews and Arabs.

Refers to BMEC tel: 279 (E 10339/92/31)

Last Paper

E 11815

References

(Print)

(How disposed of)

W.O. (M.I.2)
(M.O.4.)
Am (M.I.36)
14 Oct
d) Mr. Schen / M.I.5.
26 Oct

(Action completed)

Clutx

(Index)

1/4/49

Next Paper

E 12797.

(Minutes.)

Copy
W.O. M.I.2.
M.O.4.
A.M. A.I.36.

Consular Dept. Q/K 11/10

M.I.5. Mr Schen.

LT 2-X.

LT. 20-X.

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SECRET.

British Consulate-General,
Jerusalem.

September 18th. 1948.

(44/16/48).

SECRET

12594

Dear Department,

The following information has been passed to us in confidence by a British source who, having regard to his position, is anxious not to get the persons of whom he speaks, into trouble. We feel, however, that you might care nevertheless to have the information on record.

2. There is with the Jews a certain Captain Shepherd of the Suffolk Regiment who deserted to the Jews with an armoured car in the basest possible fashion. His desertion stood him in poor stead however since the Jews collared the armoured car and interned him as a suspicious character. He, along with six other deserters from the Army who tried to join the Jews, are all said to be still interned at or near Tel Aviv but well treated.

3. One British Army deserter, formerly with the Jews, was captured by the Arabs. He was interviewed by Reuter's agent. He may have 'disappeared' since'.

4. Known to be with the Arabs in the Jerusalem area for the most part serving with the irregulars, are Summers and Lines about whom we have corresponded with the Foreign Office, and also Casey, Fernhead, Willoughby, Carter, Gallagher, Callahan and Marsdon. The latter, who was in the Palestine Police C.I.D. is very high up on the Jews' list of 'war-criminals' and they frequently try to elicit information as to his whereabouts. They tried to interrogate Manson of the Diplomatic Wireless in the French Hospital somewhat roughly in the mistaken belief that he was Marsdon. Doubtless he knows a good deal about their murky pasts. There is also another Englishman with the Arab irregulars called 'Said' whose real name is not known to our source.

5. Another source reports that Australian born Captain John Howard of the Highland Light Infantry, who was expecting to be demobilized in Haifa about the middle of June last, is reported now to be serving as an officer in the Haganah at Tel Aviv. Howard, who made no secret of the fact during the last months of the mandate that he intended to join the Jews, was intensely disliked by his men for his openly strong pro-Jewish sentiments. He is the son of a Brigadier or Colonel who was serving at Fayyid. Same source reports, on very reliable information, that there are a large number of Canadian, Australian and British non-Jewish pilots serving in the 'Israeli' air force who are only used however as instructors. HaYarkon Street in Tel Aviv is commonly referred to by the Jews as 'English Road' because of the numbers of Britishers who frequent it.

6. We are sending a copy of this letter to the British Middle East Office reference their telegram No. 279 to the Foreign Office.

Yours ever,

Jerusalem Consulate-General.

Consular Department,
Foreign Office,
London.

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24
1948

E

51

PALESTINE

B

E 12797

Registry Number 12797/92/31

TELEGRAM FROM
Mr. Marriott, Haifa.
No. 735.

Dated 30th Sept.
Received in Registry 4th Oct.

Jews are willing to release British deserters,
now P.O.Ws, providing they are repatriated.

Requests names of such deserters.

Last Paper.

E 12594

References.

(Print.)

(How disposed of.)

8/ Dec 1948
5 Oct

(Minutes.)

I have spoken with Captain Maude of the
Judge Advocate General's branch of the War Office,
and he has contracted to let me have a list
of British deserters in Jewish hands, whom
the W.O. wd. like to see repatriated. Meanwhile
I submit a dft. hl: to HAIFA. lancehill. O.X.

all 7/10
Circular Rept.

See now E 13128. draft hl: xrefined. 4/ 11:10.

(Action
completed.)

CS 20/10

(Index.)

1/11/48

Next Paper.

E 13128

32003 F.O.P.

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Registry
No.

~~CONFIDENTIAL~~
~~SECRET~~
Confidential.
~~SECRET~~
~~SECRET~~

Draft.

Telegram to :-
HAIFA

No.

(Date)

Repeat to :-
B.M.E.O.

~~CONFIDENTIAL~~
~~SECRET~~
Cypher.

Distribution :-

Departmental.

Copy to:-

Capt. D.M. Maude,
War Office.

F.O.,

(Date) 8th October, 1948.

Despatched.....M.

[Security classification] CONFIDENTIAL.
-if any

Addressed to HAIFA

telegram No. (date)

repeated for information to B.M.E.O.

Your telegram No. 735. British Deserters
in the hands of the Jews.

2. You might start with Corporal Franks and
Private Higgins who form the subject of B.M.E.O's
original telegram. Please let me know what
success you have and whether you can make arrange-
ments for their repatriation.

3. I shall let you have the names of further
cases when and as they come to my notice and
presume that B.M.E.O. will do likewise.

✓ All in 10
Circular Ref. 1st.

Lance P. 11. 8: x.
2. 1/10/48

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12797 E 53

CYPHER/OTP

DEPARTMENTAL DISTRIBUTION

FROM HAIFA TO FOREIGN OFFICE

Mr. Marriott
No. 735

D.4.22 pm 30th September, 1948
R.7.37 pm 30th September, 1948

30th September, 1948.
Repeated to Jerusalem.

CONFIDENTIAL

Addressed to Foreign Office telegram No. 735 of
September 30th and to B.M.E.O. (Cairo) repeated to
Jerusalem.

Reference B.M.E.O. (Cairo) telegrams regarding
the release of deserters now prisoners of war the
Jewish authorities state that in principle they are
willing to release them. There may be objections in
individual cases or special conditions may be attached.
The only condition made so far is that the men should
be sent from here to British territory and not (repeat not)
to an "enemy" country.

2. If I can be supplied with the names for passing to
the Jewish authorities they will make a decision on each
case.

Foreign Office please pass B.M.E.O. (Cairo) 196
and Jerusalem 328.

[Repeated to B.M.E.O. (Cairo) and Jerusalem].

[Copy sent to M.E. Secretariat].

888

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25

E

54

1948

PALESTINE B

E 13128

Registry Number E13128/92/31

TELEGRAM FROM
Mr. Marriott,
No. 781, Haifa.

Dated 8th
Received in Registry 9th Oct.

Names of 6 British Army deserters, Jews are willing to release.

Refers to Haifa tel: 735 (E12797/92/31)

Jewish authorities have been asked to release these men. Asks where are they to be sent.

cpd) MES.

Last Paper.

F 12797

References.

(Minutes.)

Reprinted to B.M.S.O.

Copy to Capt D.M. Mando. W.O.

Reply sent to say that these men shd be sent to CYPRUS.

Y. H. X.

(Print.)

Consular Dept. 15/10.

(How disposed of.)

1) Phil Bent
(M/E13128/375/31) Ref 11

2) Capt. Mando
15/10.

3) Tel) Haifa 6/5 9 Oct.

8) Palestine List 12 Oct.
(M/E13128/8/31).

9) Capt. J. M. Mando W.O.
Mr. Mando. C.O. 12 Oct.

(Action completed.)

CS 201x

(Index)

15/10/49

Next Paper.

E 13136

32008 F.O.P.

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13128

En Clair

FILES

FROM HAIFA TO FOREIGN OFFICE

Mr. Marriott.
No. 781.

D: 6.13 p.m. 8th October, 1948.

8th October, 1948.

R: 8.02 p.m. 8th October, 1948.

My telegram No. 735. E 12797/92/31

Letters have now been received through International Red Cross from Corporal Samuel Franks, No. 5122480 and Private Raymond Higgs No. 14184553 both Royal Warwicks, Driver Harold Lever, No. 21041632, R.A.S.C. 258 Company, Gunner A.P. Hart, No. 19100729 and G.E. Smethurst, No. 14475221. Both 6th Field Regiment R.A. Private J. Simpson No. 14443041, 1st Battalion, K.O.S.B.

2. First two deserted in Jerusalem on 18th April. Next three from Haifa on 16th April. Last from Sarafand on 4th May.

3. Authorities have been asked to release them for repatriation to British territory where should they be sent?

[Copy sent to Middle East Secretariat]

@@@

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No. E.

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Restricted
Open

OPEN.

LT.

Confidential

Date

10-10-48

Despatched

9-50a

Draft. Tel: HAIFA

No 625

Date: 9th Oct.

Cypher
Cypher Enclaves

Files.

Cy, with copy of
Haifa Tel no 781, is.

War Office Capt D.M.
Maude.

C.O. Mr Gutch.

Consular Dept. a.c.

Laure Ruskell 9x.

Your Tel No 781: about [British Army
Deserters]

War Office wd: prefer these men
to be sent to CYPRUS, as they
will have to stand trial in the
Middle East. They can however
arrange for them to be sent out again
to the Middle East shd: you
find it necessary to send them first
to England.

RECEIVED IN C.S.
11 OCT 1948

283.
9/x

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OUT FILE

57

Cypher/OTP
E
CONFIDENTIAL

FILES

FROM FOREIGN OFFICE TO HAIFA

No. 655

9th October, 1948. D. 9.50 a.m. 10th October, 1948.

CONFIDENTIAL

Your telegram No. 781 [British Army Deserters].

War Office would prefer these men to be sent to Cyprus as they will have to stand trial in the Middle East. They can however arrange for them to be sent out again to the Middle East should you find it necessary to send them first to England.

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27

E

E

58

1948

PALESTINE B

13362

Registry Number E13362/92/31

TELEGRAM FROM
Mr. O'Leary,
No. 820. Haifa,Dated 14th
Received in Registry 15th Oct.Israeli press report that 2 Britons will be
tried for serving in Jewish forces.

MFA Hebrew press digest of 11th Oct.

Last Paper.

E 13136

References.

(Print.)

(How disposed of.)

15) W.O. (P.R. News)

✓ 19 Oct

17) W.O. (P.R. News)

✓ 16 Nov

17) 2nd ~~affiliated~~

W.O. (P.R. News)

2 Dec

OVER

(Action
completed.)

C413

(Index.)

4/4/49

Next Paper.

E 13765

(Minutes.)

Copy. P.R. News. W.O.
~~Cpl. D.M. Mando. W.O.~~ for obs:

At first sight I shd. say that this report
had no foundation whatsoever. It is just possible
however that it might refer to British Army
deserters who fought in Palestine, but even these
wd. be tried for desertion rather than for serving
with the Jewish Army.

Lance MRKELL. 16: x

Mr Evans
News Dept: MMB
211

The question as to whether the provisions
of the Foreign Enlistment Act would apply
in respect of the hostilities in Palestine has
been fully discussed on E 11815 of 1948
and connected papers. It is, I think, clear
from these discussions that no prosecution
under the Act for service with the Israeli
Army would have been instituted prior
to a public announcement under the Act
was applicable to the hostilities in Palestine.
and no such announcement has yet.

S2008 F.O.P.

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27

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58

1948

PALESTINE B

13362

Registry Number E13362/92/31

TELEGRAM FROM
Mr. O'Leary,
No. 820. Haifa,Dated 14th
Received in Registry 15th Oct.Israeli press report that 2 Britons will be
tried for serving in Jewish forces.

MFA Hebrew press digest of 11th Oct.

Last Paper.

E 13136

References.

(Print.)

(How disposed of.)

15) W.O. (P.R. News)
19 Oct17) W.O. (P.R. News)
16 Nov17) 2nd remainder
W.O. (P.R. News)
2 Dec

[OVER]

(Action
completed.)

(Index.)

CS 4/3

1/4/48

Next Paper.

E 13765

(Minutes.)

Copy. P.R. News. W.O.
~~Ch. D.M. Mando. W.O.~~ for obs.

At first sight I shd. say that this report
had no foundation whatsoever. It is just possible
however that it might refer to British Army
deserters who fought in Palestine, but even these
wd. be tried for desertion rather than for serving
with the Jewish Army.

Lance THIRKELL. 16: X

Mr. Evans.
News Rept: NKB 211

The question as to whether the provisions
of the Foreign Enlistment Act would apply
in respect of the deserters in Palestine has
been fully discussed on E 11615 of 1948
and connected papers. It is, of course, clear
from these discussions that no prosecution
under the Act for service with the Israeli
Army would have been instituted prior
to a public announcement that the Act
was applicable to the deserters in Palestine.
and no such announcement has yet

32003 F.O.P.

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been made.

of which, however, that this report is probably
 without foundation. But it is just
 possible that the man referred to may be a young soldier who is
 being held by court-martial for desertion
 which is an offence under Section 12 of the
 Army Act.

Yours A.C. Gutteridge
 (BUTTERIDGE)

17) In Red Ink
 "3rd Regiment"

✓ 12 Jan
 DH) P.R. News (b)
 Wm. Gifford
 19 Jan

Mr. Churchill

It seems that W.O. has not commented.
 You may care to remind them.

R. Balfour
 7/xi

Written reminder to W.O. (P.R. News) +

b.u. 10.xi

47.18.xi

Another 17. W.O. P.R. News again +

b.u. 17.xii

47.17.xii

17. W.O. P.R. News once more +

b.u. 17.xii

47.12.xii

17. W.O. P.R. News

b.u. 17.xii

47.11.i

1.) W.O. (P.R. News (B) 21/1

b.u. 16 P.R. News.

47.27.i

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13362

Enter 59

En Clair

POLITICAL DISTRIBUTION.

FROM HAIFA TO FOREIGN OFFICE.

1 C please

Mr. O'Leary
No. 820

D. 1.25 p.m. 14th October 1948
R. 3.45 p.m. 14th October 1948

14th October 1948.

Repeated to Jerusalem,
B.M.E.O. Cairo,
United Nations General Assembly Paris
(U.K. Del.) Saving.
U.K. Delegation New York Saving.

Addressed to Foreign Office telegram No. 820 of
October 14th repeated for information to Jerusalem,
B.M.E.O. Cairo and Saving to United Nations General
Assembly Paris (U.K. Del.) and United Kingdom Delegation
New York.

Following is "M.F.A." digest of Hebrew daily press
11th October.

A report from London states that two young Britons
are shortly to be brought for trial for having served
with the Israeli army. British legal experts believed
that they will be acquitted as a man cannot be
punished for serving with the army of a State
that has not been recognised. Hamashkif.

Foreign Office please pass Saving to United Nations
General Assembly Paris (U.K. Del.) and U.K. Delegation
New York as my telegrams Nos. 661 and 173.

[Repeated Saving to United Nations General Assembly
Paris (U.K. Del.) and U.K. Delegation New York].

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WHI 9400 Ext 1660



PRNews(b),
The War Office,
Room 061,
London, S.W.1.

21st January, 1949.

Your reference

INDEXED

13362/92/31

Dear Sir,

26 JAN 1949

Foreign Office Letter No.
13362/92/31.

Reference the attached, could you possibly send us a copy of the original letter referred to as one does not appear to have been received in this branch.

This is the first reminder we have had regarding this matter.

Yours faithfully,

D. B. Butler
(Major D.B. Butler)

The Under-Secretary of State,
Foreign Office,
S.W.1.

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Registry
No. E13362/92/9

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Draft Letter

Mr. D. P. S.
War Office.

P.R. News (6)
(Room 061)

NOTHING TO BE WRITTEN IN THIS MARGIN.

(1345) W1-5000-114 200m 2/17 C.S.S. G. 200

RECEIVED IN
DIVISION.
28 JAN 1949
SENT TO
TYPE 28/1
1/2

FOREIGN OFFICE, S.W.1.

OUT FILE January, 1949. 61
+ m o c

Sir,

I am directed etc. to refer to your letter of the 21st January, which bore no reference number, and to enclose a copy of Haifa telegram 820 of the 14th October, 1948, which was first addressed to you on the 19th October for observations and about which reminders were sent, on the 20th November, 7th December and the 1st January, all of which must have presumably gone astray.

I am to add that not much importance now attaches to this question but that nevertheless ~~any comments at: you may have~~ ^{any comments at: you may have} ~~to make on the contents of this telegram and~~ ^{to make on the contents of this telegram and} ~~remarks which you may have to make on this~~ ^{in & interest.} telegram.

I am,
Sir, Your obedient servant.
4.27:1

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OUT FILE

62

29th January, 1949.

I am directed by Mr. Secretary Bevin to refer to your letter of the 21st January, which bore no reference number, and to enclose a copy of Haifa telegram 820 of the 14th October, 1948, which was first addressed to you on the 15th October for observations and about which reminders were sent to you on the 20th November, 7th December and the 1st January.

2. I am to add that not much importance now attaches to this question but that nevertheless any comments which you may have to make on the contents of this telegram would be of interest.

I am,
Sir,
Your obedient Servant.

(sgd) B.A.B. knows

**The Under-Secretary of State,
War Office.**

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31
1948E
EASTERN DEPARTMENT

PALESTINE

E

63
14422

Registry Number E/14422/92/31

FROM Mr. Creech Jones
to Mr. Bevin. (C.O.)

No. -

Dated 5th
Received in Registry 10th Nov.

Mr. Creech Jones' proposal to recommend reduction
of sentences at present being served in England
by three ex Palestine policemen.

Copy of letter to Home Secretary of 5th November,
giving details of proposal and case histories of
G. Ross, G.A. Stephenson, A.E. Akehurst.

Requests comments.

Last Paper

E/144214

References

(Print)

(How disposed of)

off Mr. Creech Jones
from Mr. Bevin
✓ 23 Nov

(Action
completed)

C/26/4

(Index)

3/11/48

Next Paper

E/14424

(Minutes.)

I think the clemency advocated by the Colonial
Office in favour of these three prisoners is justified.
It is not really our business but we know that the
conditions during the final months of the British
evacuation were inevitably confused. That is perhaps
some excuse for the disappearance of these Palestine
policemen, who were due to be disbanded in any case.

In the Secretary of State's absence, I submit
a draft to the Colonial Secretary from the
Parliamentary Under Secretary.

Mr Evans *Wright*
~~Private Sec.~~ 17/11

J. G. S. Beith

(J. G. S. Beith)
11th November 1948.

I am not sure that I agree,
but I do not think there are
any aspects of the matter which
really concern us. Remission
of sentence would of course be
attached by the Jews.

B. B. Beith

34967
Discussed with
Mr Wright. Re-draft B. B. Beith 22.11

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64 S. Agents.
H. W. Wright
H. Burrage
COLONIAL OFFICE,
CHURCH HOUSE,
GREAT SMITH STREET, S.W.1.

5th November, 1948.

14422

My dear Sir,

I enclose a copy of a letter
which I have addressed to
Chuter Ede about three ex-Palestine
Constables who are at present
serving sentences of imprisonment
in this country.

I shall be glad to learn
whether you have any comments to
offer in the matter.

Yours

M. M. M. M.

The Right Honourable
Ernest Bevin, M.P.

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2651/60/48

65

Colonial Office,
5th November, 1948.

I have recently had under review the cases of the three ex-Palestine Constables - George Ross, Godfrey Alan Stephenson and Arthur Edward Akshuraf - who were removed to this country under the provisions of the Colonial Prisoners Removal Act, 1934. (Home Office papers 938,535 refer).

These three prisoners were sentenced by a Military Court at Haifa to terms of 10 and 7 years imprisonment to run concurrently. The attached note gives particulars of the offences for which they were convicted and the circumstances attending their trial at Haifa.

Shortly before the conviction of these men, a civilian - Henry Martin Dickson (a British subject) - was sentenced to 5 years imprisonment, and three British Constables to 4 years each for attempting to sell arms to Arabs. Arrangements had been made to remove these four prisoners to this country at the same time as Ross, Stephenson and Akshuraf, but they escaped from Acre Gaol before they could be removed. Although two of these four men are now in the United Kingdom and the others are understood to contemplate coming here, my legal advisers share the view indicated in the Home Office letter of the 27th August that they cannot now be recaptured. I agree of course that the fact that these men are at large and cannot be arrested is legally irrelevant so far as the cases of the men under review are concerned, but at the same time I feel that it must be borne in mind.

There are, so far as I can see, no political issues involved now that the Mandate in Palestine has been terminated and the Jewish "state" set up. Moreover, the deterrent aspect of the sentences on

/members

The Right Honourable
J. Chuter Ede, M.P.

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members of the Palestine Police has no longer any relevance. Having regard therefore to all the circumstances, I feel that I should now recommend to His Majesty that the sentences imposed on these three men should be reduced and my view is a remission of eight years (thus reducing each sentence to two years of which about seven months have been served) would be appropriate. However, before I take a final decision in the matter, I shall be glad to know whether you have any comments to offer.

Perhaps you would also let me know whether you consider that I should make any statement in the House when a final decision is reached and, if so, what form such a statement should take. You will be aware of course that questions have already been asked in Parliament about the case. I gather that your practice is against any discussion in Parliament about advice tendered to His Majesty on the exercise of His prerogative of pardon.

There is one further point on which I should like your advice. Since it would be in accord with Palestine practice to inform the prisoners immediately of any remission, I assume that there would be no objection, when the time comes, to my asking you to arrange to inform these three men accordingly.

I am sending copies of this letter to Bevin and Shinwell in case they have any comments.

(Sgd.) A. GREECH JONES.

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The Men Concerned

George Ross (23), Godfrey Alan Stephenson (21), and Arthur Edward Akehurst (20).

War Service

The three men had previous war service before joining the Palestine Police, Ross and Akehurst in the Army and Stephenson in the Navy.

Desertion

The three men were officially reported as having deserted from the Palestine Police, although no charge on this ground was brought.

Apprehension

The three prisoners were captured by the Palestine Security Forces together with an Arab during an Arab attack on the Jewish Colony of Neve Yaakov on the 10th March. They were then in possession of an Armoured Car and two Bren Guns, the property of the Palestine Government. Ross was identified as having been concerned with the stealing of the car.

Charges and Trial

The three men were tried before a Military Court on board H.T. "Ocean Vigour" at Haifa on the 22nd-24th March. The charges were:-

- (1) Discharging firearms contrary to Regulation 58(a) of the Palestine Defence (Emergency) Regulations, 1945
- (2) Carrying firearms ammunition and explosives contrary to Regulation 58(c) of the Palestine Defence (Emergency) Regulations, 1945.
- (3) Having in possession firearm accoutrements being the property of the Government of Palestine contrary to Regulation 143(1)(d) of the Palestine Defence (Emergency) Regulations.

/Verdict

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Verdict of Court and Sentences

The three men were found not guilty on first charge, but guilty on second and third charges.

They were sentenced to 10 years imprisonment on the second charge and to 7 years imprisonment on the third charge, both sentences to run concurrently.

The sentences were confirmed by the G.O.C. British Troops, Palestine.

Note on Trial

An Arab barrister initially represented the accused.

After arraignment on the first charge to which the men pleaded not guilty, their Arab counsel asked for adjournment before proceeding to the second and third charges, as he did not feel he should take the responsibility of defending them as they were helping the cause of his own people, and asked that the Court should grant them an opportunity of finding British counsel. He complained that in any case he had not been given time to prepare his case or contact British counsel. The three British men all stated they would prefer to be defended by British counsel, but Mr. Weston Saunders, the British counsel suggested, declined to accept the defense.

As the Arab counsel still felt that British counsel should be obtained he asked for an adjournment of the Court for 10 days in order to obtain such counsel from South Africa. This was opposed by the prosecution "for reasons of security of prosecution witnesses". It was stated that it would have involved dispersal of these witnesses. The court felt unable to grant the adjournment.

Subsequently the Arab counsel requested permission from the Court to withdraw from the case. This was granted.

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As a result, the three men were without counsel when tried on the second and third charges on which they were sentenced.

The accused refused to plead or to interrogate witnesses. This was interpreted by the Court as a refusal to plead from malice, and a plea of not guilty was duly entered.

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NOTHING TO BE WRITTEN IN THIS MARGIN.

(88654) W.1469/147 50,000 6/47 A. & E.W.Ltd. Gp. 485

Registry No.

E 14422/

B.A.B.B.

Draft:

The Colonial
Secretary.

from

Mr. Mayhew

Mr Reddaway

BAB Burt
L2.11

OUT FILE

69

FOREIGN OFFICE, S.W.1.

November, 1948.

CONFIDENTIAL

You were good enough to send the Foreign Secretary in a letter of 5th November a copy of a letter which you had addressed to Chuter Ede about three ex-Palestine constables who are at present serving sentences of imprisonment in this country.

In the absence of the Foreign Secretary I am writing to say that we have no comments on the legal issues involved or on the principle of the matter. It is clear however that the action which you propose would, if it became known, cause a good deal of comment and criticism in certain quarters. We therefore feel that it might be better if the action were not taken during the present acute phase of the Palestine question but were postponed for say a month. We also feel that if it is possible to avoid a public statement when the action is taken, this would be desirable.

Cum (Sgd.) C. P. MAYHEW.
22/x1

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20

Confidential.

In the absence of the Foreign Secretary, I am writing to say that we have no comments on the legal issues involved on on the principle of the matter. It is clear, however, that the action which you propose would, if it became known, cause a good deal of comment and criticism in certain quarters. We therefore feel that it might be better if the action were not taken during the present acute phase of the Palestine question, but were postponed for, say, a month. We also feel that if it is possible to avoid a public statement when the action is taken, this would be desirable.

(Sgd.) C. F. MAYHEW.

(Parliamentary Under-Secretary).

The Right Honourable A. Creech-Jones, M.P.

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Minutes.

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Mr. Balfour.

The following is the text of a letter sent by the Israeli Foreign Office to Dr. Paul Mogh, personal representative of the acting United Nations Mediator in Palestine:

"Reports have reached my Government in recent days concerning the arrival in Transjordan of not inconsiderable numbers of British troops. It is learned further that some of these troops have now reached parts of Palestine.

If these reports should prove well-founded, my Government would take a most serious view of so bold an intervention by a foreign power. I am accordingly directed to request you to have this matter investigated without delay by United Nations Military Observers serving with the Arab Legion, and let me know the results of your inquiry".

The Associated Press have received unofficial information that the British troops came from Mafrak and Aqaba, and also that the British have asked for the use of monasteries in the Jerusalem region for barracks. These monasteries have been used to house Arab refugees. This report said it was believed that this request has been granted and the monasteries have been taken over by the British. This information also says that arms shipments, reportedly for Transjordan, have arrived at Aqaba recently, including tanks of all classes, as well as other arms and military equipment for Iraq and Transjordan. The shipments to Iraq are said to include Fury fighter bombers.

Peter Matthews,
News Department,
9th November, 1948.

Nothing to be Written in this Margin.

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En Clair

DIPLOMATIC DISTRIBUTION

FROM JERUSALEM TO FOREIGN OFFICE

Mr. Beaumont.
No. 604.

D: 10.33 a.m. 10th November, 1948.

10th November, 1948.

R: 11.38 a.m. 10th November, 1948.

Repeated to: Cairo,
B.M.E.O. (Cairo),
Amman Saving,
Bagdad Saving,
Beirut Saving,
Damascus Saving,
U.N. General Assembly Paris (U.K. Del.) Saving,
U.K. Delegation New York Saving.

IMPORTANT

Addressed to Foreign Office telegram No. 604 of 10th November, 1948 repeated for information to Cairo and B.M.E.O. (Cairo) and Saving to Amman, Bagdad, Beirut, Damascus, U.N. General Assembly Paris (U.K. Delegation), and U.K. Delegation New York.

An individual called Stickel claiming to represent the Johannesburg Daily Express asked me this morning by telephone whether I could confirm or deny that British arms were being supplied to Transjordan and British troops arriving there. I replied that I believed that this had already been subject of an official denial by the War Office reported by the B.B.C. yesterday. He told me that these reports were circulated by 'high Jewish authorities' and asked whether I thought they were evidence of a Jewish desire 'to break with Britain'. I suggested that he put this question to the 'high Jewish authorities' themselves and added that the reports did not appear to be circulating elsewhere than in the Jewish areas.

2. He then asked whether British subjects who had been captured by Jews while fighting for the Arabs would be proceeded against legally by the British Government for fighting for a foreign country. I replied that I thought there were British subjects fighting on both sides, probably more on the Jewish side, and that doubtless they would all receive the same treatment at the hands of the British Government, but I was not aware what that treatment would be.

3. He asked me finally whether these British subjects, prisoners in Jewish hands, were in touch with me. I replied that in some cases they had contacted me through the International Red Cross. In reply to his question whether he could quote me on this, I said there was no objection.

Cairo please pass to B.M.E.O. as my telegram No. 123. Foreign Office please pass Saving to U.N. General Assembly Paris (U.K. Del.) and U.K. Delegation New York as my telegrams Nos. 11 and 21 respectively. [Repeated Saving to U.N.G.A. Paris (U.K. Del.) and U.K. Del. New York]

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UNITED KINGDOM DELEGATION
TO THE GENERAL ASSEMBLY OF UNITED NATIONS

7, AVENUE D'IEÑA, PARIS

19th November, 1948.

E 14458/92/31

INDEXED

Dear Sir,

You asked me on November 19th whether I could secure a copy of a communication said to have been sent by the Jewish authorities to the United Nations representative, Mohr, on November 9th about the alleged presence of British troops in Palestine and the supply of British arms to Transjordan.

I asked Reedman about this and he said that he vaguely recollected the communication but that the Secretariat had taken the view that the allegations contained in it were so veiled and indirect that no action was required. The communication has not been circulated as a United Nations paper.

Reedman agreed with me that the best reply to any enquiries would be to say that, as the United Nations Secretariat had not thought fit to pass on the communication to us, we have not been in a position to take cognizance of the Jewish allegations.

Yours ever
J.G.S. Beith
(J.G.S. Beith)

L. Thirkell, Esq.,
Eastern Department,
Foreign Office,
S.W. 1.

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